Minneapolis-St. Paul Typographical Union No. 30 *and* Quebecor Printing St. Paul, Inc. and Twin Cities Printing Trades Union, Local 29C. Case 18–CD–326

February 17, 1995

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS STEPHENS, COHEN, AND TRUESDALE

The charge in this Section 10(k) proceeding was filed September 27, 1993, by Quebecor Printing St. Paul, Inc., the Employer, alleging that the Respondent, Minneapolis-St. Paul Typographical Union No. 30 (Local 30), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing or requiring the Employer to assign certain work to employees it represents rather than to employees represented by Twin Cities Printing Trades Union, Local 29C (Local 29C). The hearing was held on June 14 and 15, 1994, before Hearing Officer Debra J. Morgan. Thereafter, the Employer, Local 30, and Local 29C filed briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Employer is a Minnesota corporation with an office and place of business at St. Paul, Minnesota, where it is engaged in the business of commercial printing. During the year preceding the hearing, a representative period, the Employer purchased goods and materials which were shipped to and received by the Employer at its St. Paul, Minnesota facility, directly from points outside the State of Minnesota valued in excess of $50,000. The parties stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Local 30 and Local 29C are labor organizations within the meaning of Section 2(5) of the Act.

II. DISPUTE

A. *Background and Facts of Dispute*

The Employer, using offset wet printing, produces color catalogues, magazines, and retail inserts. Prior to the advent of desktop publishing, the Employer used a cold-type composition process. A typesetter created text by operating a photocomposition machine, which put the text on paper or onto film. A keyliner placed and then pasted the galleys on a white art board to create a page of text. After the keyliner completed the pasteup of the art board, the board would go to the prepress department, which converted the art boards into films from which printing plates could be made for production printing.

The Employer initially installed desktop publishing equipment in March 1990, specifically, four computer work stations, a flatbed scanner, and a film processing unit. When the Employer installed the desktop publishing equipment in March 1990, its general manager, Lange, assigned the work to employees represented by Local 30. In late 1992, the Employer decided to upgrade its desktop publishing equipment, to enable the Employer to electronically integrate and manipulate the entire test copy—that is, the desktop computer operator would be able to complete an entire page at the computer, joining color pictures with the text.

In 1993,[1] after the Employer had decided to expand its desktop publishing equipment, Caruso, the president of Local 29C, voiced concern over the equipment to Lange, who asked the Employer's human resource manager, Giannola, to inform Caruso what equipment the Employer had purchased. On April 7, Giannola wrote to Caruso detailing the equipment which the Employer had ordered.

On June 23, Local 29C filed a grievance protesting the Employer's assignment of the enhanced desktop publishing work to employees represented by Local 30 and claimed jurisdiction over the work for employees represented by Local 29C. On September 7, the Employer formally responded to Local 29C's grievance, denying it in full.

After the Employer denied Local 29C's grievance, Jaehnert, the secretary-treasurer of Local 30, learned that Local 29C planned to pursue its grievance to arbitration. On September 15, Jaehnert wrote the Employer stating that Local 30 would use every legal means at its disposal to protect the unit jurisdiction work of its members, specifically including the work on the Employer's expanded desktop publishing equipment. Jaehnert informed the Employer that any assignment or reassignment of the work of employees represented by Local 30 to employees outside of the Local 30 bargaining unit could result in strike action.

B. *Work in Dispute*

The work in dispute is the operation of the enhanced desktop publishing equipment at the Employer's Minneapolis facility, involving electronic color separation, corrections, and stripping.

C. *Contention of the Parties*

The Employer contends that the work created in 1993 was merely an enhancement of work that Local

[1] Unless otherwise noted all subsequent dates are in 1993.

30 had begun performing when the Employer first introduced desktop publishing in 1990. Rather than characterizing the work as electronic color separations and color stripping, the Employer refers to the work as ''enhanced electronic imaging.'' The Employer argues that the work performed should be defined in terms of the procedure followed rather than the ultimate result of the work done.

The Employer contends that it has invested time and money in training employees represented by Local 30 to use the desktop publishing equipment both in 1990 and in 1993 and that it would not be cost effective to reassign the work now. Finally, the Employer expressed its preference to continue to assign the work in dispute to employees represented by Local 30.

Local 29C contends that employees represented by it have historically performed color stripping and color separations. Employees represented by Local 29C presently perform those functions manually as they have in the past. Local 29C points out that its collective-bargaining agreement with the Employer does not differentiate between manual and electronic color separations. Local 29C further contends that it did not object to the assignment of desktop publishing to Local 30 in 1990 precisely because the desktop publishing capabilities did not involve color separations and color stripping. Moreover, it argues that the Employer's claim that employees represented by Local 29C have not been trained on the desktop publishing equipment is inaccurate, pointing to the fact that employees represented by it currently perform desktop publishing functions.

Local 29C argues further that the work in dispute should have been awarded to its members because the work should be defined by the ultimate result, e.g., color stripping and color separations, rather than by the process by which the result is accomplished. Finally, Local 29C argues that this case involves a representation issue, not a work assignment dispute, and it is therefore not the type of case which the Board should consider in this form of proceeding. In particular, Local 29C claims that the desktop publishing at the Employer's plant involves employee functions covered by its collective-bargaining agreement with the Employer.

Local 30 contends that the factors of its collective-bargaining agreement with the Employer, Employer preference, relative skills, and economy and efficiency of operations favor an award of the desktop publishing work to employees represented by Local 30.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of dispute under Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed on a method for the voluntary adjustment of the dispute.

As set forth above, upon learning that Local 29C had filed a grievance concerning the assignment of the disputed work to employees represented by Local 30, the latter sent a letter threatening the Employer that if it assigned or reassigned the disputed work to employees represented by Local 29C it would ''use every legal means at its disposal to protect the unit jurisdiction work of its members'' including ''strike action.''[2]

We find that the foregoing facts establish reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred[3] and, as there is no claim that an agreed-upon method of voluntary adjustment exists, we find that the dispute is properly before the Board for determination.[4]

E. *Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of the disputed work after giving due consideration to all relevant factors involved. The following factors are relevant to making a determination of the dispute before us:

1. Certifications and collective-bargaining agreements

Neither of the Unions has been shown to have been certified by the Board as the collective-bargaining representative of the Employer's employees.

As noted above, the Employer is a party to current collective-bargaining agreements with both Local 30 and Local 29C. Each of the collective-bargaining agreements arguably covers the work in dispute. Accordingly, we find the factor of collective-bargaining agreements does not favor an award of work to employees represented by either Union.

2. Employer past practice and preference

Lange testified that the assignment of the work in dispute to employees represented by Local 30 is consistent with the Employer's previous assignment of desktop publishing at its facility. The preference of the Employer is to assign the work in dispute to employees who are represented by Local 30. We find that these factors favor an award of the disputed work to the employees represented by Local 30.

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[2] We note that Local 30 reiterated its threat when Jaehnert handed the September 15, letter to Giannola, the Employer's human resource manager, and stated: ''I regret having to take this action, however, I am prepared to do it to maintain the work in Local 30.''

[3] See *Haddon Craftsmen*, 308 NLRB 1190, 1191–1192 (1992); *Spancrete Northeast*, 267 NLRB 950, 951 (1983).

[4] Contrary to Local 29C, it is clear that the issue here is which one of the two competing groups of represented employees should be assigned the work and that this case does not involve any representation issue involving the employees performing the particular work.

3. Area and industry practice

The evidence indicates that both Unions represent employees assigned to certain aspects of desktop publishing equipment. Additionally, Local 29C contends that it represents employees performing desktop publishing work at other facilities. However, there was no evidence presented at the hearing indicating an established industry or area practice. Accordingly, we find the evidence with respect to area and industry practice inconclusive.

4. Relative skills

The Employer's has assigned desktop publishing equipment and work to its employees represented by Local 30 and these employees possess the skills and training to perform the work. Specifically, desktop publishing requires proficiency with a large number of software programs. At the present time, the Employer's employees represented by Local 30 are proficient at using at least 40 different software programs. In contrast, its employees represented by Local 29C have not had the experience or training in using the software programs for desktop publishing. We find that this factor favors an award of the disputed work to employees represented by Local 30.

5. Economy and efficiency of operations

Lange testified that in response to customer concerns, the Employer decided to enhance its desktop publishing capabilities, and to continue to assign the equipment and work to employees represented by Local 30 as it deemed this arrangement to be more efficient. Lange testified that its employees represented by Local 30 were trained in desktop publishing, and that the equipment was an upgrade of the equipment that employees represented by Local 30 were already using, and that these employees operated the new equipment efficiently. In contrast, the employees represented by Local 29C would need further training to operate the equipment. Accordingly, we find that the factor of economy and efficiency of operations favors an award of the disputed work to employees represented by Local 30.

Conclusions

After considering all the relevant factors, we conclude that employees represented by Local 30 are entitled to perform the work in dispute. We reach this conclusion relying on the factors of Employer past practice and preference, relative skills, and efficiency and economy of operations. In making this determination, we are awarding the work to employees represented by Local 30, not to that Union or its members.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees represented by Minneapolis-St. Paul Typographical Union No. 30 are entitled to perform the operation of desktop publishing, involving electronic color separation and corrections and electronic stripping at its facility located at 1999 Shepard Road, St. Paul, Minnesota.